

FILED - USDC -NH  
2022 MAY 8 AM 11:53

5684

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Josephine Amatucci

v.

James Pineo

PETITION FOR INVESTIGATIVE REPORT  
UNDER A SUPOENA

1. The Plaintiff is asking the Court to MANDATE the Town Manager James Pineo to produce a copy of his investigation of two employee's that he admitted he investigated their crimes against the Plaintiff ..... "TWO YEARS AGO".
2. That she made it very clear to him that the Supreme Court stated that investigative reports are allowed to the public for accountability of misconduct. Especially where Pineo did his investigation two years ago.
3. The Plaintiff filed a complaint to Mr. Pineo asking for an investigation of employee's Police Chief Dean Rondeau and Robert Maloney.
4. For their Conspiracy accusing the Plaintiff of crimes that she never committed. And she produce evidence beyond a reasonable doubt that she never committed any crime, yet Rondeau had her Maliciously Prosecuted for such crime.

1 of 22 Pages

5. The Town Manager Mr. Pineo refused to produce a copy of the investigations, or for the Plaintiff to review such investigations.

6. Although the serious crime of police misconduct by chief Dean Rondeau may be before the Attorney General for review, under the law the Town must also internally do their own investigation, for their version of events, in response to all Complaints of police misconduct, filed by the public, that occurred while the police were on the job.

7. The Plaintiff then filed a subpoena to Mr. Pineo and handed him the subpoena in person, and he refused to respond to the Supoena.

8. Therefore, the Plaintiff is accusing Pineo of CONTEMPT, and is asking the court to demand that he produces copies of the investigative reports of police chief Dean Rondeau and Robert Maloney, employee's of the Town of Wolfeboro.

9. The investigative reports contain evidence that the Plaintiff needs as a party to a lawsuit against Rondeau and Maloney. Which is before this court. Regarding what occurred, what did not occur at the Town Dump, which resulted in an unlawful malicious prosecution.

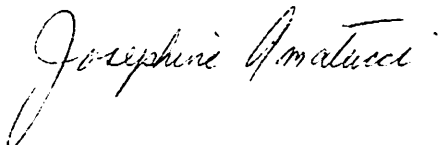
WHEREFORE: The Plaintiff is asking the Court to issue an ORDER TO PRODUCE the investigative reports or if there is no response for the court to accuse Pineo of CONTEMPT OF COURT. This evidence is critical evidence to prove her claims in a lawsuit.

4. It is the LAW that a response to a supoena is MANDATORY.

Respectfully,

Josephine Amatucci

C. Town Manager James Pineo

A handwritten signature in cursive script that reads "Josephine Amatucci".

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

## UNITED STATES DISTRICT COURT

for the

JOSEPHINE AMATUCCI

Plaintiff

v.

Civil Action No.

DEAN RONOPAU & ROBERT MALONEY

Defendants

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

TOWN MANAGER, TAMPAS PINO

(Name of person to whom this subpoena is directed)

☐ **Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: PRODUCE INVESTIGATION REPORT BY TOWN MANAGER & SELECTMAN OF DEAN RONOPAU'S ASSAULT CHARGES AGAINST ME, AND MALONEY'S FALSE ACCUSATIONS, THAT HE WAS STANDING IN DOORWAY & I PUSHED HIM DO. THE STA.

Place:

TOWN HALL  
OFFICE OF TOWN MANAGER

Date and Time:

5 DAYS - DUE MAY 4, 2022

☐ **Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

TOWN HALL  
TOWN MANAGER'S OFFICE

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature JOSEPHINE AMATUCCI

The name, address, e-mail address, and telephone number of the attorney representing (name of party) \_\_\_\_\_

, who issues or requests this subpoena, are:

## Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45.11

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*I received this subpoena for (name of individual and title, if any) James S. Pineda Torreson (date) 4/27/2022☒ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_Josephine Pineda Torres

on (date) \_\_\_\_\_

; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ \_\_\_\_\_

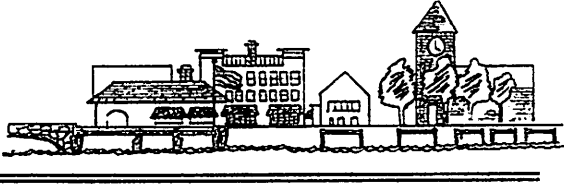
My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

Josephine Pineda Torres  
Server's signature\_\_\_\_\_  
Printed name and title\_\_\_\_\_  
Server's address

Additional information regarding attempted service, etc.: \_\_\_\_\_



Town of  
Wolfeboro

BOARD OF SELECTMEN  
Linda Murray, Chair  
David Senecal, Vice  
Brian Deshaies  
Luke Freudenberg  
Brad Harriman

James S. Pineo, Town Manager

Tuesday, May 3, 2022

Ms. Josephine Amatucci  
PO Box 272  
Wolfeboro, NH 03896

Dear Ms. Amatucci:

This letter is in response to your request dated April 27, 2022 that the Town of Wolfeboro.

*Produce investigation report by Town Manager & Selectmen of Dean Rondeau's assault charges against me, and Maloney's false accusations, that he was standing in doorway and I pushed him down the stairs.*

As you are aware this incident was litigated in Belknap Superior Court. Because this was being litigated through the courts this incident was deemed not necessary to conduct an employee conduct investigation on Robert Maloney, who is no longer employed by the Town of Wolfeboro.

Further, in the case of Chief Rondeau, neither the Town Manager nor the Board of Selectmen has the authority to investigate or remove police personnel. Wolfeboro has established a Police Commission which has the authority to appoint and remove, for just cause, police personnel including Chief Rondeau as outlined under RSA 105-C:4

In closing no investigation file or documents related to the incident at Solid Waste exist with the Town Manager or the Board of Selectmen, nor am I required to create or produce documents which do not exist as this matter was handled by the Belknap Superior Court.

Sincerely,

James Scott Pineo  
Town Manager

Cc: Board of Selectmen





*Town of  
Wolfeboro*

David A. Senecal, Chairman  
Brad Harriman, Vice Chairman  
Q. David Bowers  
Linda T. Murray  
Paul O'Brien

James S. Pineo, Town Manager

February 3, 2020

Josephine Amatucci  
PO Box 272  
Wolfeboro Falls, NH 03896

Dear Ms. Amatucci:

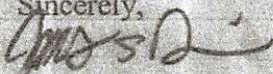
I have read your letter to me dated January 13, 2020 (your document number 4651), as well as the other documents you have provided (documents 4652, 4659, 4662 and 4673).

You have requested a meeting or hearing with me as Town Manager and with the Board of Selectmen. You have requested that the Town terminate Robert Maloney, Stephen Champaigne and Police Chief Rondeau. You have also requested that an outside investigator be hired to look into the situation.

Respectfully, I am denying your request for a hearing with me and the Selectmen; and denying your request that an outside investigator be hired. Your allegations appear to be based primarily upon the assault charges brought against you which were prosecuted by the Belknap County Attorney's Office. As Town Manager, I have the duty under RSA 37:6, II to "appoint, upon merit and fitness alone, and to remove, all subordinate officers and employees under [my] [control] ...". However, this duty does not require me to have a hearing every time a complaint is made against a Town employee. I have investigated your allegations enough to know that a meeting or hearing on the conduct of Mr. Maloney, Mr. Champaigne, or Chief Rondeau is not required and would not be productive. Nor do I believe that an outside investigation is warranted.

Further, in the case of Chief Rondeau, neither the Town Manager nor the Board of Selectmen has the authority to investigate or remove police personnel. Wolfeboro has established a Police Commission which has the authority to appoint and remove, for just cause, police personnel such as Chief Rondeau. See RSA 105-C:4.

Sincerely,

  
James Pineo  
Town Manager



5673

To: Town Manger Mr. Pineo and Selectmen  
From: Josephine Amatucci  
Re: Right to investigative files

*copy*

EXHIBIT 1.

On May 29, 2020 the New Hampshire Supreme Court reversed a quarter-century of precedent interpreting the state's ....right to know law (RSA 91-A).... concluding that it had **WRONGLY** decided the application of an exemption to the statute in prior rulings. Under RSA 91-A:5 IV the Court had previousley held that records concerning an .....internal investigation .....qualified as records "pertaining to internal PERSONNEL PRACTICES" under RSA 91-A:5 and that such records were categorically exempt from disclosure in response to a Right to Know Law request. Uniton Leader Corp. v. Fenniman, 136 N.H. 624 (1993). The ruling in Fenniman was subsequently extended to apply to investigations by third party investigators on behalf of the EMPLOYER.

NH Supreme Court in May of 2020 ruled that RECORDS related to misconduct by public employees are..... NOT AUTOMATICALLY EXEMPT FROM DISCLOSURE.... Releasing more information from government agencises and municipalities.

Justice Gary E. Hicks of the NH Supreme Court stated:

"An overly broad construction of the "internal personnel practices' exemption has proven to be an **UNWARRANTED CONSTRAINT ON A TRANSPARENT GOVERNMENT**. We overrule Fenniman (Union Leader v. Fenniman) to the extent that it decdiied that records related to "internal personnel practices' are categorically exempt from disclosure under the Right -to-Know Law instead of being subject to a balancing test to determine whether such materials are exempt from disclosure. We overrule our prior decisions to the extent that they applied the per se rule established in Fenniman".

The decision opens the door to municipalities to release information about their employees.

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EXHIBIT 2

Also, the NH Supreme Court Justice Patrick Donovan overruled confidentiality, and

allowed access to documents involving alleged police misconduct under the personnel practices exemption of RSA 91a, the state's right-to-know law. The judge wrote:

"We overrule the Fenniiman case *Union Leader v. Fenniman*, to the extent that it broadly interpreted the "internal personnel practices" exemption and its progeny to the extent that they relied on that broad interpretation".

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#### EXHIBIT 3

Our Right To Know Law does not explicitly address requests for police investigative files. Also, does not distinguish between active or closed investigative files.

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#### EXHIBIT 4

##### NO PRIVACY WITH REGARD TO OFFICIAL DUTIES

The argument that police officers who have been found to have engaged in misconduct maintain a privacy interest greater than that of the public, whom they serve, is SIMPLY WRONG. Several courts have found that public officials, including police officers, have NO RIGHT to privacy with regard to their official duties. See , *Rutland Herald v. City of Rutland*, 48 A.3d at 572 (V. 2012); *Rinsley v. Brandt*, 446 F. Supp. 850, 857,-58 ((D.Kan. 1977); *Cowles Publ'g Co. v. State Patrol*, 78 P.2d 597, 605 (Wash 1988) . As stated by the SUPREME COURT of Montana, "the conduct of law enforcement officers is a sensitive matter so that if they engage in conduct resulting in discipline for misconduct in the line of duty, THE PUBLIC SHOULD KNOW." *Great Falls Tribune Co. v. Cascade County Sheriff*, 775 P.2d 1267 (Mo. 1989).

RSA 105:13-b (1) states: "Exculpatory evidence in a personnel file of a police officer shall be disclosed prior to trial. Exculpatory evidence is NOT CONFIDENTIAL.

The Federal Appeals Court ruled that police misconduct records are PUBLIC RECORDS TO BE RELEASED TO THE PUBLIC. New York Post April 19, 2022.

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#### EXHIBIT 5

The office of the Attorney General in Florida stated that :

"the confidential provisions of Florida Statutes do NOT EXEMPT AN INACTIVE CRIMINAL INVESTIGATIVE FILE FROM INSPECTION AND COPYING. While an active internal affairs investigation is PENDING.".



"An investigation shall be presumed to be inactive if no finding is made within 45 days after the complaint is filed."

A question relating to confidentiality of internal affairs investigations and the PUBLIC RECORDS LAW, is that the intent voiced by the Legislature is openness and the availability of public records. The Public Records must be active for denial of public inspection. Active only if there is anticipation of securing an arrest or prosecution in the foreseeable future. Or pending appeals.

Therefore, the Attorney General stated, "it is my opinion that the confidentiality provisions of the statutes DO NOT EXEMPT AN INACTIVE CRIMINAL INVESTIGATIVE FILE from .....INSPECTION AND COPYING, pursuant to Florida Statutes. While an ACTIVE internal affairs investigation is pending concerning the same complaint.

That the custodian of the record delete only that portion of the record for which an exemption is asserted and to provide the remainder of the record for examination.

.....

#### EXHIBIT 6

Under the new standard, records considered PERSONNEL FILES, are subject to release. The government can no longer exempt police misconduct filed under personnel practices.

Supreme Court stating that EMPLOYEE MISCONDUCT RECORDS not automatically exempt from disclosure. Overturning a 27 year old precedent. Cases Seacoast Newspapers Inc. v. City of Portsmouth and Union Leader Corp. v. Town of Salem.

In the 1993 case, Union Leader v. Fenniman, the court held that personnel practices were covered under INTERNAL DISCIPLINARY INVESTIGATIONS. DOSCO; OMARU OMVESTOGATOPMS/ exemptions...personnel-related exemptions-one for "internal personnel practices, the other to personnel files, and DISCIPLINARY INVESTIGATIONS in the 1993 case Union Leader v. Fenniman.

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#### EXHIBIT 7

In the case of Obiajulu v. City of Rochester, 625 N.Y. S. 2d 779, 780 (N.Y. App. Div. 1995), the court stated:

"disciplinary files containing disciplinary charges, the agency determination of those charges, and the penalties imposed ...are not exempt from disclosure" because they were not

"personal and intimate details of the employee's personal life".

.....

5679

To: Mr. Pineo, Town Manager

From: Josephine Amatucci

April 28, 2022

*JPV*

DEAR MR PINEO:

You and the Selectmen accepted my Complaint when you stated you investigated my Complaint against Rondeau and Maloney. You completed your investigation as of your letter of February 3, 2020, and in your letter signed by all dated February 4, 2022. However I had a right to a hearing during you investigation, under Due Process, a hearing that you have continuously denied me which was a violation of my Constitutional rights.

**AN INVESTIGATIVE REPORT IS NOT A PERSONNEL FILE**

In refusing me access to the investigative files of Dean Rondeau and Robert Maloney You Mr. Pineo stated that I cannot access the PERSONNEL FILES of Maloney and Rondeau, under Chapter 91-a IV. However, a..... PERSONNEL FILE .... means the file is maintained by the agency containing the records of the employee's employment, including evaluations, assignments, status changes, and imposed discipline.

Please see attached a statement by the former police chief Stuart Chase who stated in an article on the FRONT PAGE of the Granite State News, on November 23, 2006, that :

"Complaints do not go in-to PERSONNEL FILES, rather they go into the INTERNAL AFFAIRS FILE."

.....There are ....PERSONNEL FILES.... and ..... PERSONNEL RECORDS..... and an investigatory Report is in a PERSONNEL RECORD and not a PERSONNEL FILE. Public Records shall be retained as Personnel Records. Information contained in Personnel FILES are privileged and confidential, not information in Personnel RECORDS, such as investigatory records.

I have a right to access the Investigatory report, explaining in detail the reason for the final decision. The Town will issue a decision of findings of my Complaint. Under the law you had 60 days of my request in 2020 to issue a Final Agency Decision, without a hearing there can be no right to an appeal, a violation of Due Process.

As stated in a Newspaper Article The New Hampshire Union Leader obtained the .....INVESTIGATORY FILE.....THROUGH A RIGHT TO KNOW REQUEST. In the case in Manchester, involving Jonathan Jones, Jessica Jones and Sandra O'Donnell in a police department holding cell.

#### PRIVACY EXEMPTIONS

The Supreme Court Justice Margaret Workman wrote in the case of The Charleston Gazette v. The State Police, that information about an officer's duties WHILE ON THE JOB did not meet a PRIVACY EXEMPTION under the Freedom of Information Act.

With this SUBPOENA I demand my right under.... Due Process.... to a copy of the INVESTIGATION REPORT that you stated you completed in the year of 2020, per your letter of February 3, 2020 (a copy of which is attached) on employee's Robert Maloney and Dean Rondeau. A copy of the Report, a right of a victim of employee misconduct.

In your letter of February 3, 2020 you stated, "I HAVE INVESTIGATED" your allegations" on the ASSAULT charges, brought against you", charges which involved Dean Rondeau who ORDERED , in a CONSPIRACY , with the Belnap Sheriff's Dept to prosecute me for an Assault with Bodily Injury, that did not occur according to the alleged victim Robert Maloney's Testimony. And my allegations that Maloney was NEVER STANDING IN THE DOORWAY, and I never pushed him down two steps in the office of the DUMP. Which was verified at the trial by Mr. Champaigne. These were my ALLEGATIONS that you investigated.

This investigation is..... NOT AN INTERNAL PERSONNEL PRACTICE.... where disclosure would constitute an invasion of privacy.

#### THE RIGHT TO KNOW LAW AND THE CONSTITUTION

The NH Supreme Court in May of 2020 the Court overturned its own 1993 rulings, in the case of the Union Leader v. Fenniman, in a decision that restored the promises of transparency and accountability to municipalities under the Right to Know Law and under the NH Constitution pt 1, art. 8, facilitating access to public records. A wide victory for "public's right to know about misconduct by public officials that was previously deemed confidential" . A historic New Hampshire Supreme Court decision that restored the promises of transparency and accountability enshrined in the state's right to know law and the New Hampshire Constitution. That the public's right to know is the bedrock of our Constitution. That it is a victim's Bill of Rights to be notified of all Town proceedings. To be advised of the case progress, when not yet finalized, and in a final disposition. For evidence material to a victim's fair trial.

#### DUE PROCESS OF THE LAW



"The purpose of the right to know law is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." NH Civil Liberties Union v. City of Manchester, 149 N.H. 437, 438, 821 A.2d 1014 (2003). Thus the right to know law helps further our state constitutional requirement that the public's right of ACCESS to governmental proceedings and RECORDS (whether active or inactive .....SHALL NOT BE RESTRICTED, whether an investigation is final or on-going. See NH Constitution pt 1, art. 8.

With these rights in mind you have no discretion but to allow me a copy of the investigations you claimed you did on Rondeau and Maloney in February 3, 2020. As I am not requesting INTERNAL PERSONNEL PRACTICES REGARDING:

- (1) confidential, commercial or financial information
- (2) test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, academic examination data, or personnel, medical, welfare, library user, videotape sale or rental.

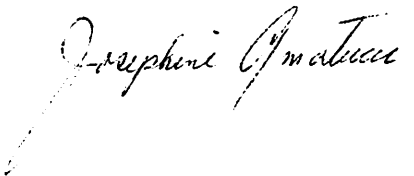
That under the case of N.H. Housing Fin. Auth. 142 N.H. at 546, 705 A.2d 725 you have a heavy burden to deny me access to the investigative files of employee Robert Maloney and Dean Rondeau. City of Nashua 141 N.H. at 476, 686 A.2d 310.

An investigative report is subject to disclosure under RSA 91-A:4 and :5. "A right to ensure the greatest possible access to the actions and records of all public bodies. RSA 91-A:1. This law has constitutional dimensions in our Bill of Rights because of the addition to pt.2 art. 8, in 1976, providing that

"the public's right of access to governmental proceedings and records shall ..... "not be restricted".

A proceeding that covers both active and inactive proceedings of the Town in the case.

Josephine Amatucci



4/14/22, 12:39 PM

## Chapter 91-A ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

*They be in INTERNAL AFFAIRS File, Records*

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

V. Teacher certification records in the department of education, provided that the department shall make available teacher certification status information.

VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

VII. Unique pupil identification information collected in accordance with RSA 193-E:5.

VIII. Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding.

IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body. *NOT PRELIMINARY*

X. Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105-D except where such recordings depict any of the following:

- (a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.
- (b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.
- (c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.

XI. Records pertaining to information technology systems, including cyber security plans, vulnerability testing and assessments materials, detailed network diagrams, or other materials, the release of which would make public security details that would aid an attempted security breach or circumvention of law as to the items assessed.

XII. Records protected under the attorney-client privilege or the attorney work product doctrine.

**Source.** 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1. 2002, 222:4. 2004, 147:5; 246:3, 4. 2008, 303:4, eff. July 1, 2008. 2013, 261:9, eff. July 1, 2013. 2016, 322:3, eff. Jan. 1, 2017. 2018, 91:2, eff. July 24, 2018. 2019, 54:1, eff. Aug. 4, 2019. 2021, 163:2, eff. July 30, 2021.

### Section 91-A:5-a

**91-A:5-a Limited Purpose Release.** – Records from non-public sessions under RSA 91-A:3, II(i) or that are exempt under RSA 91-A:5, VI may be released to local or state safety officials. Records released under this section shall not be redisclosed by the recipient.

ch trained assessment  
y dialing the Statewide  
Line managed by Har-  
omes 844-711-HELP.  
addition to our mobile  
nd virtual network, we  
ave at least four satellite  
ons in operation within  
st month of operations,"  
Boyle.

Continued from Page 4

h the Center for Exce-  
in Advocacy started  
n. 1, 2014. "There was  
a disruption in the  
of funds to Fedcap,"  
McQuaide.

e second contract ex-  
in December 2014,  
was not renewed, ac-  
ing to Linda Reilly,  
community relations  
er at the Rhode Island  
ODH. "We have had  
association with Fed-  
since that contract was  
renewed," she said, but  
did not elaborate.

#### actor moves on

hen Rhode Island's  
governor, Gina Rai-  
nchin, took over from Lin-  
Chafee at the start of  
5, she chose not to reap-  
at Stenning, who within  
nths went on to work for  
cap, where he is now Se-  
r Vice President for the  
Occupational Health Prac-  
Area.

he controversy in Maine  
er the potential Fedcap  
eover of the ASPIRE pro-  
m (Additional Support  
People in Retraining and  
ployment) led to a Free-  
n. of Information request  
a group that provides  
al services to low income  
ainers.

Maine Equal Justice Part-  
rs obtained a copy of Fed-  
p's bid to manage ASPIRE,  
hich revealed among other  
ings that the organization  
as paid out \$403,000 in  
legal settlements since  
013 involving allegations of  
orkplace discrimination as  
ell as wage, disability and  
ersonal injury disputes.

According to the Maine Sun-

Willard said the police of-  
ficer, Ryan Boyd, resigned  
in July 2011, just before a  
disciplinary hearing was  
conducted as part of the ter-  
mination process. Police  
turned the case over to New  
Hampshire Attorney Gen-  
eral Joseph Foster, whose  
office investigated the case,  
Willard said.

But a grand jury did not  
indict Boyd, Willard said.

"The New Hampshire  
Union Leader obtained the  
investigatory file last week  
through a Right-to-Know  
request. It includes written  
reports of the original Dec.  
20, 2013, arrest notes from  
Attorney General investiga-  
tors, at-scene interviews,  
and the 29-minute video-  
tape of Jonathan Jones,  
Jessica Jones and Sandra  
O'Donnell in a police de-  
partment holding cell.

The three have hired a  
lawyer who has filed a no-  
tice of a civil rights violations  
against the city. Manchester  
lawyer John B. Kenison Jr.  
offered to settle the claims  
for \$475,000, but said he and  
the city's claims adjuster  
have not come to an agree-  
ment on the amount.

He expects he will have to  
file a lawsuit against Boyd  
and the police department.

"Whether they were drunk  
or not drunk, whether they  
had just killed the President,  
you handcuff them, and then  
you handcuff them to the wall.  
You don't have any right to  
pepper spray them," Kenison  
said.

According to police reports,  
Derry resident Jessica Jones  
was driving the wrong way on  
Pine Street and with the lights  
off in her car when Manches-  
ter police pulled her over.

She was arrested for drink-  
en driving. Her brother and  
sister were intoxicated, police  
reports said, and charged with  
disorderly conduct and resist-  
ing arrest. Police reports said  
all three were uncooperative.

The videotape shows the  
three handcuffed with their  
hands behind their backs to a  
bench in a police department

second burst of OC in the area  
above Jessica's eyes," he wrote.

O'Donnell became en-  
raged, stomping her feet and  
kicking. She got a one-second  
blast of spray. And then Jona-  
than got a blast. afterward he  
said "take me out of these cuffs  
and let's go out back."

Boyd said they all settled  
down after that, and the video  
shows other officers eventu-  
ally cleaning their faces with  
towels.

"It felt like my face was on  
fire," said Jessica Jones, who  
spoke to the New Hampshire  
Union Leader on Friday. In-  
sistently, Jones wanted to  
bring her hands to her face,  
but she was unable.

"I felt traumatized. I couldn't  
believe it could happen. I felt  
scared. I didn't know what  
would happen after that," she  
said.

Jones, who is now a stay-  
at-home mom, said she had  
left a Christmas party, and  
police were belligerent from  
the initial stop. Several times  
she pleaded to go to the  
bathroom to no avail. "I was  
treated like an animal," she  
said.

She wet herself and felt  
both humiliated and en-  
raged, which prompted her  
to yell at police, she said.

She was pleased to see  
that Boyd lost his job but  
surprised that he was never  
charged with a crime.

Attempts to locate Boyd  
were unsuccessful.

Charles Reynolds, a re-  
tired Dover police chief who  
consults around the coun-  
try on use of force issues,  
viewed the video at the re-  
quest of the New Hampshire  
Union Leader. He said the  
fact that Boyd lost his job is  
an appropriate outcome.

Excessive use of force  
often amounts to a misjudg-  
ment, a tactical error or a  
violation of policy, he said.  
That all can lead to a termi-  
nation and even a lawsuit,  
but not necessarily a crim-  
inal charge, which includes  
proving the person intended  
to commit the crime.

"It's a high threshold to  
prove someone guilty of a

division captain who then  
forwards it to the assistant  
chief.

"In reviewing the 'Office  
of Attorney General Inves-  
tigative file, it appears likely  
that the forms never made it  
from the Officer in Charge to  
the training division super-  
visor," reads investigation  
notes written by Attorney  
General Investigator Todd  
Flanagan.

Willard said he learned  
about the matter several  
months after it happened  
while reviewing use of force  
reports and the video.

"Immediately I knew that  
the officer's actions were  
improper," he said. The  
three were handcuffed to  
the bench and essentially no  
threat to Boyd, he said.

"Because somebody's  
mouthing off doesn't give  
you the right to physically  
abuse them. I was disgusted  
by the video. We don't train  
our officers to behave like  
that," Willard said. Willard  
said no other officers were  
disciplined, and he noted  
that some helped the three  
towel off the spray.

Willard said police of-  
ficers have had to pepper  
spray people in the past  
when handcuffed to the  
bench. Kicking, spitting and  
headbunting are all forms  
of assault that necessitate a  
response that could include  
OC spray, he said.

No other excessive use  
of force investigations are  
pending, Willard said last  
week.

According to previous ar-  
ticles, Boyd joined the police  
force in January 2012. Boyd  
was the son of a Derry po-  
lice officer. He was a police  
officer in Sudbury, Mass.,  
and was enrolled at Universi-  
ty of Massachusetts Lowell  
when he was hired.

He was earning \$60,400 a  
year at the time of his resig-  
nation.

Willard said he notified  
the attorney general. He  
expected assault charges  
would eventually be filed,  
which would have made  
the matter public. It's un-

Home Why Us Team Services Insights News (603) 881-5

*Review Video interview located*

## NH Supreme Court Overrules Precedent Protecting Internal Public Employee Investigations.

Brian J.S. Cullen, Esq.

In two decisions issued on May 29, 2020, the New Hampshire Supreme Court reversed a quarter-century of precedent interpreting the state's Right to Know law (RSA 91-A), concluding that it had wrongly decided the application of an exemption to the statute in prior rulings. The decisions significantly narrow the application of an exemption to disclosure of governmental records under the law and, hence, correspondingly broaden the scope of the statute. The rulings have significant, if not fully articulated, ramifications for potential disclosure of records concerning internal investigations of public employees.

By way of background, RSA 91-A broadly provides a public right to inspect "governmental records," defined to include "any information created, accepted or obtained by, or on behalf of, a public body" in any form, unless exempted. In turn, RSA 91-A:5 provides a list of bodies and records that are exempt from the disclosure law, including jury and parole board records. It also exempts:

Records pertaining to internal personnel practices; confidential, commercial, or financial information; . . . and personnel, medical, welfare . . . and other files whose disclosure would constitute invasion of privacy.

*OVERULES*

RSA 91-A:5 IV. In, The Court had previously held that records concerning an internal investigation of a police officer qualified as records "pertaining to internal personnel practices" under RSA 91-A:5 AND that such records were categorically exempt from disclosure in response to a Right to Know request. *Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993). The ruling in *Fenniman* was subsequently extended to apply to investigations by third party investigators on behalf of the employer.



LII > Wex > **Right to confront witness**

## Right to confront witness

### Overview

The Sixth Amendment provides that a person accused of a crime has the right to confront a witness against him or her in a criminal action. This includes the right to be present at the trial (which is guaranteed by the Federal Rules of Criminal Procedure Rule 43). As well as the right to cross-examine the prosecution's witnesses.

### Constitutional Basis and Purpose

The Confrontation Clause found in the Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." The Clause was intended to prevent the conviction of a defendant upon written evidence (such as depositions or ex parte affidavits) without that defendant having an opportunity to face his or her accusers and to put their honesty and truthfulness to test before the jury.

In *Mattox v. United States*, 156 U.S. 237 (1895), the Supreme Court enunciated the three fundamental purposes that the Confrontation Clause was meant to serve:

1. To ensure that witnesses would testify under oath and understand the serious nature of the trial process;
2. To allow the accused to cross-examine witnesses who testify against him; and
3. To allow jurors to assess the credibility of a witness by observing that witness's behavior.

In *Lee v. Illinois*, 476 U.S. 530 (1986), the Court noted that the Confrontation Clause is one of several constitutional safeguards to promote fairness in the criminal justice system. In *Ohio v. Roberts*, 448 U.S. 56 (1980), the Supreme Court left open the possibility that competing interests, such as a jurisdiction's interest in effective law enforcement, might prevail over the right to confront opposing witnesses. However, in *Coy v. Iowa*, 487 U.S. 1012 (1988), the Supreme Court held that taking other interests into account should not be interpreted as creating exceptions to "the

the individual's privacy interest in nondisclosure. If no privacy interest is at stake, then the Right-to-Know Law mandates disclosure.

Slip. Op. at p.9 (citing *Prof'l Firefighters of N.H. v. Local Gov't Center*, 159 N.H. 699, 707 (2010)) (internal citations omitted). Unlike in the *Portsmouth* case, the Court did not determine in *Salem* whether the redacted items qualified as pertaining to "internal personnel practices." It instead instructed the superior court to make that determination in light of its *Portsmouth* decision.

Because both cases are remanded for further review by the superior court, the full import of the decisions on the public access to internal employment investigations is not definitively settled. Nevertheless, the cases plainly indicate that the withholding of records will be subject to much greater scrutiny.

First, the "internal personnel practices" exemption no longer applies to internal investigative records at all. Many of the records that would fall under that definition – such as vacation and sick leave policies – will almost certainly fail the newly applicable privacy test. It is hard to conceive how such records could be deemed to implicate a privacy interest at all, much less one that outweighs the public interest in disclosure of the record. Of note, in the *Portsmouth* case, the Court discussed but did not expressly overrule its 2017 decision in *Clay v. City of Dover*, 169 N.H. 681. There, the Court determined that a completed rubric form used to compare candidates for employment did fall under the "internal personnel practices" exemption as it "relate[d] to hiring, which is a classic human resource function." *Id.* at 686. The *Portsmouth* decision did not address the continued validity of *Clay*, but at minimum such records will now be subject to the privacy balancing test set forth above.

Second, while the Court stated that records "documenting the history or performance of a particular employee fall within the exemption for personnel files," the Court's failure in the *Portsmouth* case to categorically exempt the arbitration decision from disclosure means that such records do not automatically qualify as personnel records. This is difficult to reconcile with *Pivero v. Lorgy*, 143 N.H. 187 (1998), a decision only cited by the dissent in the *Portsmouth* case. In *Pivero*, the plaintiff sought to review an investigative file concerning an investigation into his own conduct, including the deputy chief's written summary of a meeting with complaining witnesses that had been temporarily placed in his personnel file. Plaintiff based his request not on RSA 91-A but on RSA 275:56, which provides that employees are entitled (with some exceptions) to review their own personnel files, defined to include "personnel records . . . wherever located." The superior court ordered the records produced,

The use of a city auditor isn't always the best solution, as city auditors usually limit their investigations to allegations regarding financial issues.

## iCompass

For very small communities with extremely limited finances, it may not be possible to hire an Ethics Officer or an equivalent. In that case, at a minimum, citizens should verify that their local government has a system of internal controls, such as having more than one person open the mail and having more than one person check over the accounting records.

New York citizens provide a positive example of how citizens can hold their public officials accountable with their project called "Reclaim New York." The citizen-led project formed the New York Transparency Project where citizens can grade the performance of all local government officials based on 29 clear transparency practices. It's a program that all communities can use as a model for better government.

## How a Transparency Portal Supports Accountability and Transparency in Local Government

There's another way that citizens can encourage their local officials to step up and demonstrate their commitment to ethical leadership, and that's by implementing a Transparency Portal by iCompass (<https://www.icompasstech.com/>). A Transparency Portal is a seamless extension of a local government website that's designed with the accountability and transparency of local government in mind.

Citizens can use the portal to view council meeting agendas and minutes. They can even view a council meeting in progress in real time, which makes access to local government convenient for shut-ins and disabled people, as well as all citizens. Using a simple search box, citizens can retrieve all public documents within seconds. There's no better investment of tax dollars or a sure way to ensure accountability and transparency of local government than by implementing a Transparency Portal by iCompass.

# GRANITE STATE NEWS

THURSDAY, NOVEMBER 23, 2006

ESTABLISHED 1859

WOLFEBORO, N.H. GRANITE

## Role of police commission question

*Commissioner Curtis Pike says there are no 'secret files' as resident Josephine Amatucci*

BY MICHELLE GIGUERE  
Staff Writer

**WOLFEBORO** — Words were flying at the police commission meeting on Thursday, Nov. 16. During public input, Wolfeboro resident Josephine Amatucci confronted the commissioners asking if they had separate files from what the police department has. She said Chair Ben Ladd told her earlier this year that the commissioners had special files in which they kept complaints and other documents.

At the meeting, Ladd said he has his own file at home, but it only contains the commissioner handbook and anything that takes place at the meetings. Commissioner Joe Melanson agreed with Ladd saying he, too, had a file at home that contains any information he decides to keep from the meetings. Commissioner Curtis Pike said he did

Amatucci asked Melanson if he knew what happened to the complaint she filed against a police officer. Melanson said he gave it to former Police Chief Brian Black and, as far as he knew, the chief wrote Amatucci a letter back.

Amatucci asked why her complaint was not put into the officer's personnel file, and Police Chief Stu Chase said complaints do not go into personnel files. Rather, they go into the internal affairs file.

"Your complaint is very well documented and in existence," said Chase.

He went on to inform Amatucci that complaints are in Lt. Dean Rondeau's office in the personnel records, not the personnel files; however they are in the same room.

Chase said that he hand delivered the entire complaint and the officer's thick personnel file to the attorney in Concord who deals with all complaints. Amatucci said that the attorney told her there was only one item in the personnel file and asked how the file could be thick if there were only one item.

"I can't speak for counsel," said Chase.

Amatucci asked a few more questions about the commissioners and their files and what happened to

*Do Not Go in Personnel File*



*Handwritten:*  
5-23-22  
P.O. Box 272  
Wolfeboro, NH 03896

February 4, 2022

Josephine Amatucci  
P.O. Box 272  
Wolfeboro, NH 03896

Subject: Your Request for Agenda Time on Board of Selectmen's Meeting in non-public

Dear Ms. Amatucci:

The Board of Selectmen is not disposed to grant you agenda time at their next meeting in non-public session to further air your views about the Wolfeboro Police Department and the incident at the Solid Waste Facility for the following reasons:

*Handwritten:*  
WE ARE TALKING  
ABOUT AN  
INVESTIGATION  
THIS IS FRAUD

First, as you know, the Board of Selectmen has no authority or involvement in the hiring or firing or disciplining of Police Officers. In fact, it would be illegal for the Board of Selectmen to try to interfere in those matters which are under the jurisdiction of the Wolfeboro Police Commission pursuant to RSA 105 C:4. You have been informed by us many times that you need to address your issues and concerns to the Wolfeboro Police Commission. It would simply be a waste of time for the Board of Selectmen to grant you agenda time for a matter that falls outside their jurisdiction.

- Secondly, your hearing to discuss the 'investigation of the event at the dump' is denied as the matter has been investigated to the extent the town deems necessary and does not believe any further investigation is warranted as this issue has been litigated.

For all of the above reasons, the Board of Selectmen decline to provide you agenda time at their next meeting. However, should any new issues or concerns arise please feel free to contact us.

Sincerely,

*Handwritten:* James S. Pineo  
James S. Pineo, Town Manager

*Handwritten:* Linda T. Murray  
Linda T. Murray, Chair

*Handwritten:* David Senecal  
David Senecal, Vice Chair

*Handwritten:* Brad Harriman  
Brad Harriman

*Handwritten:* Brian Deshaies  
Brian Deshaies

*Handwritten:* Luke Freudenberg  
Luke Freudenberg

**Amy Capone-Muccio**

Josephine's Copy

**From:** Steve Wood <SWood@wolfeboropoliice.org>  
**Sent:** Thursday, May 05, 2022 11:15 AM  
**To:** rt109@metrocast.net  
**Cc:** Amy Capone-Muccio  
**Subject:** Re: Internal Affairs Investigation of Chief Rondeau

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Ms. Amatucci,

I am only going to respond to this one more time. You may not like the answer(s) but they are based on fact.

The Police Commission has full statutory authority over the police Department, period. That means that the Board of Selectmen and Town Manager do not. They (the BOS/TM) cannot legally do an internal investigation of any member of the Police Department and there is no record prior to 1959 that they did. That is the sole responsibility of the Police Commission and is in our purview only.

You can obviously continue to reach out to them about Police Department matters and they will continue to explain that they have no authority and that you should contact the Police Commission. I know you have been instructed that way many times in the past as you called for the termination of former Chief Chase, and now, Chief Rondeau.

Again, you don't have to like the answers or agree with them but they are based on fact. The Commission will no longer respond to court cases that have been heard and verdicts rendered, with not even a hint of police misconduct or impropriety determined by the court, nor will we entertain requests to investigate the Chief on those matters or consider termination without due process, and only once there is some valid evidence to support a claim of wrongdoing in a complaint "not" related to any prior and adjudicated court case.

Sincerely,

Steve Wood, Chairman  
Wolfeboro Police Commission

Sent from my iPad

> On Apr 18, 2022, at 11:35 AM, rt109@metrocast.net wrote:  
> Dear Mr. Wood:  
> One more thing I forgot to address. Don't ever tell me to  
> stop demanding that the Town Manager and the Selectmen take action  
> against RONDEAU.  
> The Town Manager and the Selectmen have already declared in  
> writing as to their authority to investigate the police and police chief  
> and have done investigations on them. They have responded to me in writing  
> as to the result of their investigation, however, they have used the  
> same tactics as you Mr. Wood, they addressed only what happened at  
> the dump, and not what happened in the court, where I was  
> maliciously prosecuted by Rondeau and the Belnap Sheriff Dept.

That said..... "READ MY LIPS".... I will continuously DEMAND  
that the town Manager and Selectmen and the entire police department,  
> including the police Commissioners, .....TERMINATE..... Dean Rondeau.....  
> "RESPECTFULLY". Josephine Amatucci  
>  
> -----Original Message----- From: Steve Wood  
> Sent: Wednesday, March 23, 2022 10:31 AM  
> To: rt109@metrocast.net  
> Cc: NFennessy@preti.com ; Amy Capone-Muccio ; James Pineo  
> Subject: Internal Affairs Investigation of Chief Rondeau  
>  
> Good morning Ms.Amatucci,  
>  
> As I'm sure you are aware, the documents that you requested relative to the Internal Affairs investigation of Chief  
Rondeau have been provided. I now wish to answer your questions about the process and who conducted the  
investigation.  
>  
> In my letter to you dated to you on January 27, 2022, I explained in the first paragraph that the "Wolfeboro Police  
Commission" began an internal affairs investigation of Chief Rondeau in response to your complaint, received on  
December 3, 2021. Please understand that the Commission was "not" compelled to do an investigation as your case in  
Belknap County had been heard and a verdict rendered, and no misconduct by Wolfeboro Police Department personnel  
was determined during the investigation by the Belknap County Sheriff's Department. As I stated in my letter to you,  
the only involvement Chief Rondeau in your case with Rob Maloney was to ask another law enforcement agency, one  
outside of Carroll County to conduct the investigation in the interest of fairness and impartiality, and to prevent any  
suspicion of collusion.  
>  
> I am aware that you have reached out to the Board of Selectmen, and the Town Manager to investigate Chief Rondeau  
and terminate him on a number of occasions. You have demanded the same from me. I hope the following explanation  
helps you to understand that process which the Police Commission is required to follow by law.  
>  
> Under NH RSA 105-C:4, the Police Commission is the overall authority of the Police Department. The only body that  
can legally investigate the Chief of Police is the Police Commission, and the Commission can only terminate an employee  
is with just cause, and only after hearing that satisfies due process. The Town Manager and Board of Selectmen have no  
authority over the Police Department so I would respectfully request that you refrain from demanding the Town  
Manager and/or Board of Selectmen take action against the Police Department and/or Police personnel as they have no  
authority to do so and 2. please reach out to the Wolfeboro Police Commission with any "new" concerns. We will not  
entertain any complaints on past cases that have been heard or dismissed by the courts.  
>  
> Lastly, the NH Attorney General's Office will not investigate cases that have been through the courts and verdicts  
rendered unless gross police misconduct was determined during an investigation. That clearly is not what happened in  
this matter.  
>  
> Respectfully,  
>  
> Stephen D. Wood  
> Chairman, Wolfeboro Police Commission  
>  
>  
>  
>  
>  
>  
>